

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-6209

IN THE
United States Court of Appeals

FOR THE SECOND CIRCUIT

REV. DONALD L. JACKSON,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA and
STATE OF NEW YORK,
Defendants-Appellees.

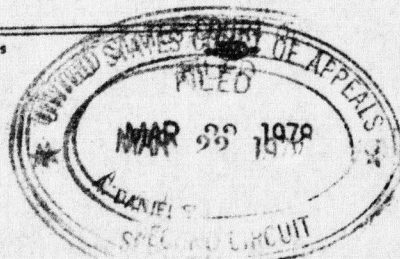
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK.

**BRIEF FOR APPELLEE,
UNITED STATES OF AMERICA**

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REV. DONALD L. JACKSON,

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Defendants-Appellees.

Appeal From the United States District Court
For the Western District of New York

**BRIEF FOR APPELLEE, UNITED
STATES OF AMERICA**

Preliminary Statement

The complaint in this case alleges that actions by various federal and state officials violated numerous constitutional and statutory provisions, thereby entitling Donald Jackson to monetary damages from the United States in excess of \$13 billion. Jackson appeals from two decisions of the Hon. John T. Curtin, Chief Judge of the United States District Court for the Western District of New York. The first decision permitted the late filing of the Answer by the United States; the second decision dismissed the complaint on the grounds of *res judicata* and failure to state a claim for relief.

Statement of the Case

The lawsuit which gives rise to the appeal now before this Court was filed by Jackson in the United States District Court for the District of Columbia in March 1974. The case was transferred to the Western District of New York in May 1974. Between May 1974 and March 1976, Jackson took appeals from various interlocutory orders on five separate occasions. The dates of the appeals were May 29, 1974; August 6, 1974; January 23, 1975; April 23, 1975; and June 12, 1975. All of the appeals were dismissed since the orders appealed from were interlocutory and non-appealable.

In March 1976, the United States asked the District Court's permission for late filing of its responsive pleading. As grounds for relief, the Government cited the confusion caused by the overlapping lawsuits filed by the plaintiff, the numerous motions and appeals by Jackson in this case, and the absence of the District Court's file while appeals were pending before this Court.

Judge Curtin reviewed the affidavit submitted in support of the motion for late filing of the responsive pleading and found that "the confusing history of the litigation set forth in (the) affidavit compels that relief". The Court granted the motion and the Government's Answer was filed.

The complaint is an amalgam of grievances against the United States and the State of New York. Although, using Judge Curtin's words, the complaint is "quite difficult to follow", it appears that Jackson alleges two causes of action against the United States: (1) the granting of tax-exempt status to charitable foundations who discriminated against him is a violation of his right to equal protection of the laws; therefore, since he brought the alleged unlawful conduct to the attention of the Internal Revenue Service, he is entitled to compensation in the amount of \$13 billion; and (2) the man-

ner in which oil leases are granted by the Department of the Interior unlawfully discriminates against Jackson, a black man.

The Government raised several defenses to the complaint, including Jackson's failure to comply with the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure.

On the issue of the tax exempt status of the charitable foundations, Judge Curtin found that Jackson had unsuccessfully litigated this claim in two other cases, Civil 1971-592 and Civil 74-185, both of which had been dismissed by Judge Curtin. Jackson's appeal from the decisions in the earlier cases was dismissed by this Court in Docket Number 75-6118. Regarding the oil lease claim, Judge Curtin ruled that the claim was "completely deficient" and failed to state a claim for relief.

ARGUMENT

POINT I

This Court lacks jurisdiction to review the District Court order permitting late filing of the answer since the appellant has not appealed said order.

Rule 3(c) of the Federal Rules of Appellate Procedure requires that a Notice of Appeal "shall designate the judgment, order or part thereof appealed from". In his Notice of Appeal, Jackson has designated only the judgment of the District Court dismissing his complaint (Government's Appendix, 44-45). There is no reference whatever to the order, entered nineteen months earlier, permitting the late filing of a responsive pleading. Since the appellant has failed to appeal the order, the issue is not properly before this Court for review. *Terkildsen v. Waters*, 481 F2d 202, 206 (2nd Cir. 1973), and *Benenson v. United States*, 385 F2d 26, 29 (2nd Cir. 1967).

POINT II

The District Court acted within its discretion in permitting the late filing of a responsive pleading.

Rule 6(b) of the Federal Rules of Civil Procedure governs motions for enlargement of time to perform acts required by the Rules or orders of the court. It provides that the court may extend the time to permit late filings "where the failure to act was the result of excusable neglect".

There is ample support in the record for Judge Curtin's finding that the Government should be permitted to file a responsive pleading out of time. Jackson had filed multiple lawsuits raising identical issues. He has taken several frivolous appeals which have delayed consideration of this lawsuit by the District Court. Because of all the appeals, the District Court's file was unavailable to the Government for most of the two year period between the date the complaint was filed and the date of the Government's Answer.

In most cases, it is not necessary to review the clerk's file when preparing pleadings since an attorney may normally rely on opposing counsel to provide accurate copies of any papers filed in the lawsuit. However, this is not the usual case since Jackson has consistently demonstrated that he is not a particularly reliable legal practitioner.

For instance, as the District Court was advised at one stage of the litigation below, the copy of the complaint served upon the United States, apparently a carbon of the original, contained a number of words at the left margin of the page with the first several letters missing. Also, the copy contained a number of typewriter strike overs and handwritten additions which may or may not have been found in the original filed with the Court. The copy also contained a number of paragraphs and sentences which made no grammatical sense

whatever and, hopefully, may have been corrected by Jackson when he filed the original.¹

Jackson's claim that he is entitled to a default judgment against the United States overlooks Rule 55(e) of the Federal Rules of Civil Procedure which provides that "(n)o judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court".

POINT III

The District Court properly dismissed the complaint.

A. Claim Relating to Foundations' Tax Exempt Status.

Judge Curtin dismissed the cause of action relating to the tax exempt status of charitable foundations on the grounds that two similar lawsuits by the same plaintiff had been dismissed in an earlier order of the Court (Government's Appendix 42).

In his decision dismissing the earlier claims, Judge Curtin said the following:

Time and again the plaintiff has failed or refused to follow the directions of the Court. He has failed to file objections to interrogatories, to file answering affidavits in support of his resistance to the summary judgment motions, and has failed to file the explanatory affidavits required by the orders. His tactics have been designed to frustrate a reasonable resolution of the problems facing the Court and, at times, have bordered on the contemptuous. His refusal to follow the directions of the

¹ The copy of the complaint found in the Government's Appendix at page 1 is a reproduction of the original, not of the carbon copy served on the United States Attorney.

Court has required the expenditure of a great deal of time and money on the part of the litigants and the Court. Although given every opportunity to make a case, and to respond to the motions within the rules, the plaintiff has failed or refused to do so (Government's Appendix 22).

Judge Curtin's order dismissing the earlier claims constituted an adjudication on the merits since Rule 41(b) of the Federal Rules of Civil Procedure provides that a dismissal for failure to comply with the Rules or any order of the Court "operates as an adjudication upon the merits", unless the dismissal order specifies otherwise.

Since the dismissal order did not otherwise specify, the dismissal of the earlier claims regarding the tax exempt status of the foundations operated as an adjudication of this claim on the merits.²

B. Claim Relating to Oil Leases.

Judge Curtin found the oil lease claim to be "completely deficient" and dismissed it for failure to state a claim (Government's Appendix 42-43).

Rule 8(a) requires that the complaint contained "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . (and) (2) a short and plain statement of the claim showing the pleader is entitled to relief".

It is clear from reading the complaint that it does not comply with the pleading requirements of Rule 8 (Government's Appendix, 1-16). While a complaint drafted by a *pro se*

² Jackson's failure to call this Court's attention to the earlier dismissals is typical of the manner in which he has conducted himself throughout this and other litigation. It is further proof that the Government was entirely justified in awaiting the return of the clerk's file before preparing its responsive pleading.

litigant must be liberally construed, *Merckens v. F.I. DuPont, Glore Forgan and Company*, 514 F2d 20 (2nd Cir. 1975), this Court has also said that "there is a limit to how much a court may be called upon to divine in assessing the sufficiency of the complaint . . ." *Heart Disease Research Foundation v. General Motors Corp.*, 463 F2d 98, 100 (2nd Cir. 1972). The complaint in this case, confused, rambling, incoherent and prolix as it is, surely must be far beyond any such limit.

Conclusion

The District Court's orders should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF SERVICE BY MAIL

State of New York }
County of Genesee }
City of Batavia }

ss. :

Rev. Donald L. Jackson vs.
USA & State of New York
77-6209

I, Leslie R. Johnson being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

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Buffalo, N.Y., 14202 Att: Theodore J. Burns Esq., Asst. U. S. Attorney

Leslie R. Johnson

Sworn to before me this

20th day of March, 19 78

Patricia A. Lacey

PATRICIA A. LACEY

NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1979

